

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VENTANA SALES DESIGN AND
MANUFACTURING, INC., a
California corporation,

Plaintiff,

vs.

NEWELL WINDOW FURNISHINGS,
INC., a Delaware corporation;
LOWE'S HIW, INC., a Washington
corporation; and DOES 1-9, inclusive,

Defendants.

AND RELATED COUNTERCLAIMS

Case No. CV 12-4279 R (RZx)

[District Court Judge Manuel Real]

~~PROPOSED~~ PROTECTIVE
ORDER

PROTECTIVE ORDER

1. Purposes and Limitations

1.1 Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Protective Order. The

1 parties acknowledge that this Order does not confer blanket protections on all
2 disclosures or responses to discovery and that the protection it affords from public
3 disclosure and use extends only to the limited information or items that are
4 entitled to confidential treatment under the applicable legal principles. The parties
5 further acknowledge, as set forth in Section 12.3, below, that this Protective
6 Order does not entitle them to file confidential information under seal; Local Rule
7 79-5 sets forth the procedures that must be followed and the standards that will be
8 applied when a party seeks permission from the court to file material under seal.

9 **1.2 Good Cause Statement:** Plaintiff Ventana Sales Design and
10 Manufacturing, Inc. ("Ventana") markets, distributes, and sells throughout the
11 nation and many other countries window blinds, including venetian window
12 blinds, and related accessories. Specifically, among other accessories, Ventana
13 markets an slat angle adjusting device or cord tilter for venetian blinds
14 ("Ventana's cord tilter").

15 Defendant Newell Window Furnishings, Inc. ("Newell") sells certain
16 window blinds that nonexclusively incorporate Ventana's cord tilter, which are
17 then sold in the United States by Defendant Lowe's HIW, Inc. ("Lowe's"), but
18 Ventana contends in this Action that a competing cord tilter that Newell is
19 incorporating in many of these window blinds infringes Ventana's patent rights.

20 Because of the parties' status as competitors, confidential business
21 information such as sales data, customer lists, cost-of-goods sold, pricing,
22 manufacturing agreements, information and materials that qualify as trade secrets
23 under California Civil Code § 3426.1, and other, similar information must
24 necessarily be protected from disclosure to opposing parties and/or other
25 competitors in the market, so as to avoid significant competitive harm.

26 For years, Ventana has been selling its patented cord tilters to Newell, and
27 Newell assembled window blinds for Lowe's incorporating into the blinds
28 Ventana's patented cord tilter.

1 The threshold issue in the complaint centers on whether or not Defendants'
2 sales of its window blinds incorporate a cord tilter that infringes Ventana's U.S.
3 Patent No. RE137,143 ("the '143 patent"), and U.S. Design Patent D569,157
4 ("the '157 patent") (collectively, "the Ventana patents").

5 Resolution of these issues and the associated damages analysis necessarily
6 requires evidence of sales information, cost information, any marketing
7 information or research, and customer lists, at a minimum, to be disclosed, at
8 minimum, to opposing counsel. The Protective Order is geared towards allowing
9 resolution of the factual and legal issues without imposing undue competitive
10 harm on the parties.

11 Federal Rule of Civil Procedure Rule 26(c)(1)(G) permits the grant of a
12 protective order upon a showing of good cause, and provides that the protection
13 of a trade secret or other confidential commercial information is a proper basis for
14 the issuance of a protective order. The party seeking such an order must
15 demonstrate a particular and specific need for the protective order. Gray v.
16 Rodewald, 133 F.R.D. 39, 40 (N.D. Cal. 1990).

17 A protective order that focuses on preventing disclosure of particular
18 information, e.g., confidential business information, where disclosure would
19 "likely cause serious harm," is supported by good cause. Hayden v. Siemens
20 Medical Systems, Inc., 106 F.R.D. 551, 556, (S.D.N.Y. 1985). To support a
21 showing of good cause, however, a protective order must be sufficiently tailored
22 in the information it seeks to protect, e.g., by designating certain classes or types
23 of information. Id.

24 A "blanket" protective order, as opposed to a broader "umbrella"
25 protective order, "permits the parties to protect documents that they in good faith
26 believe contain trade secrets or other confidential commercial information. Such
27 protective orders are routinely agreed to by the parties and approved by the courts
28 in commercial litigation, especially in cases between direct competitors." Bayer

1 AG and Miles Inc. v. Barr Laboratories, Inc., 162 F.R.D. 456, 465, (S.D.N.Y.
2 1995).

3 As direct competitors, the parties' Protective Order was drafted specifically
4 to protect the disclosure of each party's commercially sensitive sales information
5 and other confidential business information, as set forth above and below.
6 Confidential information under this agreement is specifically defined below. Such
7 information, under the Protective Order, may be designated CONFIDENTIAL or
8 CONFIDENTIAL ATTORNEY EYES ONLY, and is open to challenge by either
9 party, any third party, or the public.

10 Based on the foregoing demonstration of good cause in support of this
11 Protective Order, this Order should be granted by the Court to protect the parties'
12 confidential business information.

13
14 **2. Definitions**

15 2.1 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
18 how it is generated, stored or maintained) or tangible things that qualify for
19 protection under Federal Rule of Civil Procedure 26(c), and include, but are not
20 necessarily limited to, sales data, customer lists, cost-of-goods sold, pricing,
21 market research, and manufacturing agreements, and other similar information. It
22 is noted that some of this information may be sufficiently sensitive that it might be
23 designated pursuant to Section 2.7 below.

24 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as
25 their support staff).

26 2.4 Designating Party: a Party or Non-Party that designates information
27 or items that it produces in disclosures or in responses to discovery as
28 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES

1 ONLY”.

2 2.5 Disclosure or Discovery Material: all items or information,
3 regardless of the medium or manner in which it is generated, stored, or
4 maintained (including, among other things, testimony, transcripts, and tangible
5 things), that are produced or generated in disclosures or responses to discovery in
6 this matter.

7 2.6 Expert: a person with specialized knowledge or experience in a
8 matter pertinent to the litigation who (1) has been retained by a Party or its
9 counsel to serve as an expert witness or as a consultant in this action, (2) is not a
10 past or current employee of a Party or of a Party’s competitor, and (3) at the time
11 of retention, is not anticipated to become an employee of a Party or of a Party’s
12 competitor.

13 2.7 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”
14 Information or Items: extremely sensitive “Confidential Information or Items,”
15 disclosure of which to another Party or Non-Party would create a substantial risk
16 of serious harm that could not be avoided by less restrictive means. Such
17 information and items include, but are not necessarily limited to, sales data,
18 customer lists, cost-of-goods sold, pricing, market research, and manufacturing
19 agreements, information and materials that qualify as trade secrets under
20 California Civil Code § 3426.1, and other similar information and items.

21 2.8 Non-Party: any natural person, partnership, corporation, association,
22 or other legal entity not named as a Party to this action.

23 2.9 Outside Counsel of Record: attorneys who are not employees of a
24 party to this action but are retained to represent or advise a party to this action
25 and have appeared in this action on behalf of that party or are affiliated with a law
26 firm which has appeared on behalf of that party.

27 2.10 Party: any party to this action, including all of its officers, directors,
28 employees, consultants, retained experts, and Outside Counsel of Record (and

1 their support staffs).

2 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
3 Discovery Material in this action.

4 2.12 Professional Vendors: persons or entities that provide litigation
5 support services (e.g., photocopying, videotaping, translating, preparing exhibits
6 or demonstrations, and organizing, storing, or retrieving data in any form or
7 medium) and their employees and subcontractors.

8 2.13 Protected Material: any Disclosure or Discovery Material that is
9 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL –
10 ATTORNEYS' EYES ONLY" pursuant to the terms of paragraphs 2.2 and 2.7
11 above.

12 2.14 Receiving Party: a Party that receives Disclosure or Discovery
13 Material from a Producing Party.

14

15 3. Scope

16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also (1) any information copied or
18 extracted from Protected Material; (2) all copies, excerpts, summaries, or
19 compilations of Protected Material; and (3) any testimony, conversations, or
20 presentations by Parties or their Counsel that might reveal Protected Material.
21 However, the protections conferred by this Stipulation and Order do not cover the
22 following information: (a) any information that is in the public domain at the time
23 of disclosure to a Receiving Party or becomes part of the public domain after its
24 disclosure to a Receiving Party as a result of publication not involving a violation
25 of this Order, including becoming part of the public record through trial or
26 otherwise; and (b) any information known to the Receiving Party prior to the
27 disclosure or obtained by the Receiving Party after the disclosure from a source
28 who obtained the information lawfully and under no obligation of confidentiality

1 to the Designating Party. Any use of Protected Material at trial shall be governed
2 by a separate agreement or order.

3
4 **4. Duration**

5 4.1 **Confidential Designations at Trial:** The parties understand that the
6 Court presumptively does not allow for confidentiality designations to be
7 maintained at trial. Should either of the parties believe that any of the information
8 or items disclosed in this action that have been designated by either party as
9 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY requires
10 that such level of protection be maintained at trial, the parties will separately
11 apply to the Court for such relief sufficiently in advance of trial to allow for a
12 motion to be filed, if necessary, and a hearing and order on such motion to occur.
13 Any such request to maintain any information or items as CONFIDENTIAL or
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY for trial shall *specifically*
15 identify and enumerate the information or item(s) sought to be so protected at
16 trial, and *specifically* articulate the need to maintain such information or item(s) as
17 CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS’ EYES ONLY at trial.

18 4.2 **Confidential Designations after Final Disposition:** Subject to
19 Section 4.1, even after final disposition of this litigation, the confidentiality
20 obligations imposed by this Order shall remain in effect until a Designating Party
21 agrees otherwise in writing or a court order otherwise directs. Final disposition
22 shall be deemed to be the later of (1) dismissal of all claims and defenses in this
23 action, with or without prejudice; and (2) final judgment herein after the
24 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews
25 of this action, including the time limits for filing any motions or applications for
26 extension of time pursuant to applicable law.

1 **5. Designating Protected Material**

2 5.1 Exercise of Restraint and Care in Designating Material for
3 Protection.

4 Each Party or Non-Party that designates information or items for protection
5 under this Order must take care to limit any such designation to specific material
6 that qualifies under the appropriate standards. To the extent it is practical to do
7 so, the Designating Party must designate for protection only those parts of
8 material, documents, items, or oral or written communications that qualify – so
9 that other portions of the material, documents, items, or communications for
10 which protection is not warranted are not swept unjustifiably within the ambit of
11 this Order.

12 Mass, indiscriminate, or routinized designations are prohibited.
13 Designations that are shown to be clearly unjustified or that have been made for
14 an improper purpose (e.g., to unnecessarily encumber or retard the case
15 development process or to impose unnecessary expenses and burdens on other
16 parties) expose the Designating Party to sanctions.

17 If it comes to a Designating Party's attention that information or items that
18 it designated for protection do not qualify for protection at all or do not qualify
19 for the level of protection initially asserted, that Designating Party must promptly
20 notify all other parties that it is withdrawing the mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided
22 in this Order (see, e.g., second paragraph of Section 5.2(a) below), or as
23 otherwise stipulated or ordered, Disclosure or Discovery

24 Material that qualifies for protection under this Order must be clearly so
25 designated before the material is disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic
28 documents, but excluding transcripts of depositions or other pretrial or trial

1 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
2 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" to each page that
3 contains protected material. If only a portion or portions of the material on a
4 page qualifies for protection, the Producing Party also must clearly identify the
5 protected portion(s) (e.g., by making appropriate markings in the margins) and
6 must specify, for each portion, the level of protection being asserted.

7 A Party or Non-Party that makes original documents or materials available
8 for inspection need not designate them for protection until after the inspecting
9 Party has indicated which material it would like copied and produced. During the
10 inspection and before the designation, all of the material made available for
11 inspection shall be deemed "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
12 ONLY." After the inspecting Party has identified the documents it wants copied
13 and produced, the Producing Party must determine which documents, or portions
14 thereof, qualify for protection under this Order. Then, before producing the
15 specified documents, the Producing Party must affix the appropriate legend
16 ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
17 ONLY") to each page that contains Protected Material. If only a portion or
18 portions of the material on a page qualifies for protection, the Producing Party
19 also must clearly identify the protected portion(s) (e.g., by making appropriate
20 markings in the margins) and must specify, for each portion, the level of
21 protection being asserted.

22 (b) for testimony given in deposition or in other pretrial or trial
23 proceedings, that the Designating Party identify on the record, before the close of
24 the deposition, hearing, or other proceeding, all protected testimony and specify
25 the level of protection being asserted. When it is impractical to identify
26 separately each portion of testimony that is entitled to protection and it appears
27 that substantial portions of the testimony may qualify for protection, the
28 Designating Party may invoke on the record (before the deposition, hearing, or

1 other proceeding is concluded) a right to have up to twenty-one (21) days after
2 receipt of the transcript to identify the specific portions of the testimony as to
3 which protection is sought and to specify the level of protection being asserted.
4 Only those portions of the testimony that are appropriately designated for
5 protection within the 21 days shall be covered by the provisions of this Protective
6 Order. The entire transcript shall be treated as "CONFIDENTIAL" or
7 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" during the 21 day
8 period. Any testimony not designated prior to the expiration of the 21 day period
9 after the transcript becomes available shall be treated as undesignated.

10 Parties shall give the other parties notice if they reasonably expect a
11 deposition, hearing or other proceeding to include Protected Material so that
12 the other parties can ensure that only authorized individuals who have signed
13 the "Acknowledgment and Agreement to Be Bound" (Exhibit A) are present
14 at those proceedings. The use of a document as an exhibit at a deposition
15 shall not in any way affect its designation as "CONFIDENTIAL" or
16 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY."

17 Transcripts containing Protected Material shall have an obvious legend
18 on the title page that the transcript contains Protected Material, and the title
19 page shall be followed by a list of all pages (including line numbers as
20 appropriate) that have been designated as Protected Material and the level of
21 protection being asserted by the Designating Party. The Designating Party
22 shall inform the court reporter of these requirements.

23 (c) for information produced in some form other than documentary and for
24 any other tangible items, that the Producing Party affix in a prominent place on
25 the exterior of the container or containers in which the information or item is
26 stored the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
27 ATTORNEYS' EYES ONLY." If only a portion or portions of the information
28 or item warrant protection, the Producing Party, to the extent practicable, shall

1 identify the protected portion(s) and specify the level of protection being asserted.

2 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
3 failure to designate qualified information or items does not, standing alone, waive
4 the Designating Party's right to secure protection under this Order for such
5 material. Upon timely correction of a designation, the Receiving Party must
6 make reasonable efforts to assure that the material is treated in accordance with
7 the provisions of this Order.

8
9 **6. Challenging Confidentiality Designations**

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time. Unless a prompt challenge to a
12 Designating Party's confidentiality designation is necessary to avoid foreseeable,
13 substantial unfairness, unnecessary economic burdens, or a significant disruption
14 or delay of the litigation, a Party does not waive its right to challenge a
15 confidentiality designation by electing not to mount a challenge promptly after the
16 original designation is disclosed.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process by providing written notice of each designation it is challenging
19 and describing the basis for each challenge. To avoid ambiguity as to whether a
20 challenge has been made, the written notice must recite that the challenge to
21 confidentiality is being made in accordance with this specific paragraph of the
22 Protective Order. The parties shall attempt to resolve each challenge in good
23 faith and must begin the process by conferring directly (in voice to voice
24 dialogue; other forms of communication are not sufficient) within 14 days of the
25 date of service of notice. In conferring, the Challenging Party must explain the
26 basis for its belief that the confidentiality designation was not proper and must
27 give the Designating Party an opportunity to review the designated material, to
28 reconsider the circumstances, and, if no change in designation is offered, to

1 explain the basis for the chosen designation. A Challenging Party may proceed to
2 the next stage of the challenge process only if it has engaged in this meet and
3 confer process first or establishes that the Designating Party is unwilling to
4 participate in the meet and confer process in a timely manner.

5 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
6 without court intervention, the Designating Party shall file and serve a motion to
7 retain confidentiality under Local Rule 7 (and in compliance with Local Rule 79-
8 5, if applicable) within 21 days of the initial notice of challenge or within 14 days
9 of the parties agreeing that the meet and confer process will not resolve their
10 dispute, whichever is earlier. Each such motion must be accompanied by a
11 competent declaration affirming that the movant has complied with the meet and
12 confer requirements imposed in the preceding paragraph. Failure by the
13 Designating Party to make such a motion including the required declaration within
14 21 days (or 14 days, if applicable) shall automatically waive the confidentiality
15 designation for each challenged designation. In addition, the Challenging Party
16 may file a motion challenging a confidentiality designation at any time if there is
17 good cause for doing so, including a challenge to the designation of a deposition
18 transcript or any portions thereof. Any motion brought pursuant to this provision
19 must be accompanied by a competent declaration affirming that the movant has
20 complied with the meet and confer requirements imposed by the preceding
21 paragraph.

22 The burden of persuasion in any such challenge proceeding shall be on the
23 Designating Party. Frivolous challenges and those made for an improper purpose
24 (e.g., to harass or impose unnecessary expenses and burdens on other parties)
25 may expose the Challenging Party to sanctions. Unless the Designating Party has
26 waived the confidentiality designation by failing to file a motion to retain
27 confidentiality as described above, all parties shall continue to afford the material
28 in question the level of protection to which it is entitled under the Producing

1 Party's designation until the court rules on the challenge.

2

3 **7. Access to and Use of Protected Material**

4 7.1 Basic Principles. A Receiving Party may use Protected Material that
5 is disclosed or produced by another Party or by a Non-Party in connection with
6 this case only for prosecuting, defending, or attempting to settle this litigation.
7 Such Protected Material may be disclosed only to the categories of persons and
8 under the conditions described in this Order. When the litigation has been
9 terminated, a Receiving Party must comply with the provisions of Section 13
10 below (Final Disposition).

11 Protected Material must be stored and maintained by a Receiving Party at a
12 location and in a secure manner that ensures that access is limited to the persons
13 authorized under this Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
15 otherwise ordered by the court or permitted in writing by the Designating Party, a
16 Receiving Party may disclose any information or item designated
17 "CONFIDENTIAL" only to:

18 (a) the Receiving Party's Outside Counsel of Record in this action, as well
19 as employees of said Outside Counsel of Record to whom it is reasonably
20 necessary to disclose the information for this litigation and who have signed the
21 "Acknowledgment and Agreement to Be Bound" that is attached hereto as
22 Exhibit A;

23 (b) the officers, directors, and employees of the Receiving Party to whom
24 disclosure is reasonably necessary for this litigation and who have signed the
25 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (c) Experts (as defined in this Order) of the Receiving Party to whom
27 disclosure is reasonably necessary for this litigation and who have signed the
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 (d) the court and its personnel;

2 (e) court reporters and their staff, professional jury or trial consultants, and
3 Professional Vendors to whom disclosure is reasonably necessary for this
4 litigation and who have signed the "Acknowledgment and Agreement to Be
5 Bound" (Exhibit A);

6 (f) during their depositions, witnesses in the action to whom disclosure is
7 reasonably necessary and who have signed the "Acknowledgment and Agreement
8 to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or
9 ordered by the court. Pages of transcribed deposition testimony or exhibits to
10 depositions that reveal Protected Material must be separately bound by the court
11 reporter and may not be disclosed to anyone except as permitted under this
12 Protective Order.

13 (g) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information.

15 7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES
16 ONLY" Information or Items. Unless otherwise ordered by the court or
17 permitted in writing by the Designating Party, a Receiving Party may disclose any
18 information or item designated "HIGHLY CONFIDENTIAL - ATTORNEYS'
19 EYES ONLY" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this action, as well
21 as employees of said Outside Counsel of Record to whom it is reasonably
22 necessary to disclose the information for this litigation and who have signed the
23 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
24 A;

25 (b) Outside experts of the Receiving Party (1) to whom disclosure is
26 reasonably necessary for this litigation, and (2) who have signed the
27 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 (c) the court and its personnel;

1 (d) court reporters and their staff, professional jury or trial consultants, and
2 Professional Vendors to whom disclosure is reasonably necessary for this
3 litigation and who have signed the "Acknowledgment and Agreement to Be
4 Bound" (Exhibit A); and

5 (e) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information.

7
8 **8. Protected Material Subpoenaed or Ordered Produced**
9 **in Other Litigation**

10 If a Party is served with a subpoena or a court order issued in other
11 litigation that compels disclosure of any information or items designated in this
12 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS'
13 EYES ONLY" that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification shall
15 include a copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order
17 to issue in the other litigation that some or all of the material covered by the
18 subpoena or order is subject to this Protective Order. Such notification shall
19 include a copy of this Protective Order; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued
21 by the Designating Party whose Protected Material may be affected.

22 If the Designating Party timely seeks a protective order, the Party served
23 with the subpoena or court order shall not produce any information designated in
24 this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
25 ATTORNEYS' EYES ONLY" before a determination by the court from which
26 the subpoena or order issued, unless the Party has obtained the Designating
27 Party's permission. The Designating Party shall bear the burden and expense of
28 seeking protection in that court of its confidential material - and nothing in these

1 provisions should be construed as authorizing or encouraging a Receiving Party in
2 this action to disobey a lawful directive from another court.

3
4 **9. A Non-Party's Protected Material Sought to be Produced**
5 **in this Litigation**

6 (a) The terms of this Order are applicable to information produced by a
7 Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY
8 CONFIDENTIAL - ATTORNEYS' EYES ONLY". Such information produced
9 by Non-Parties in connection with this litigation is protected by the remedies and
10 relief provided by this Order. Nothing in these provisions should be construed as
11 prohibiting a Non-Party from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request, to
13 produce a Non-Party's confidential information in its possession, and the Party is
14 subject to an agreement with the Non-Party not to produce the Non-Party's
15 confidential information, then the Party shall:

16 1. promptly notify in writing the Requesting Party and the Non-
17 Party that some or all of the information requested is subject to a
18 confidentiality agreement with a Non-Party;

19 2. promptly provide the Non-Party with a copy of the
20 Protective Order in this litigation, the relevant discovery request(s),
21 and a reasonably specific description of the information requested;
22 and

23 3. make the information requested available for inspection by
24 the Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this
26 court within 14 days of receiving the notice and accompanying information, the
27 Receiving Party may produce the Non-Party's confidential information responsive
28 to the discovery request. If the Non-Party timely seeks a protective order, the

1 Receiving Party shall not produce any information in its possession or control that
2 is subject to the confidentiality agreement with the Non-Party before a
3 determination by the court. Absent a court order to the contrary, the Non-Party
4 shall bear the burden and expense of seeking protection in this court of its
5 Protected Material.

6
7 **10. Unauthorized Disclosure of Protected Material**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has
9 disclosed Protected Material to any person or in any circumstance not authorized
10 under this Protective Order, the Receiving Party must immediately (a) notify in
11 writing the Designating Party of the unauthorized disclosures, (b) use its best
12 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
13 person or persons to whom unauthorized disclosures were made of all the terms
14 of this Order, and (d) request such person or persons to execute the
15 "Acknowledgment and Agreement to Be Bound" that is attached hereto as
16 Exhibit A.

17
18 **11. Inadvertent Production of Privileged or Otherwise Protected Material**

19 When a Producing Party gives notice to Receiving Parties that certain
20 inadvertently produced material is subject to a claim of privilege or other
21 protection, the obligations of the Receiving Parties are those set forth in Federal
22 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
23 whatever procedure may be established in an e-discovery order that provides for
24 production without prior privilege review. Pursuant to Federal Rule of Evidence
25 502(d) and (e), insofar as the parties reach an agreement on the effect of
26 disclosure of a communication or information covered by the attorney-client
27 privilege or work product protection, the parties may incorporate their agreement
28 in the protective order entered by this Court.

1 **12. Miscellaneous**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of
3 any person to seek its modification by the court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this
5 Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in
7 this Protective Order. Similarly, no Party waives any right to object on any
8 ground to use in evidence of any of the material covered by this Protective Order.

9 12.3 Filing Protected Material. Without written permission from the
10 Designating Party or a court order secured after appropriate notice to all
11 interested persons, a Party may not file in the public record in this action any
12 Protected Material. A Party that seeks to file under seal any Protected Material
13 must comply with Local Rule 79-5. Protected Material may only be filed under
14 seal pursuant to a court order authorizing the sealing of the specific Protected
15 Material at issue. Pursuant to Local Rule 79-5, a sealing order will issue only
16 upon a request establishing that the Protected Material at issue is privileged,
17 protectable as a trade secret, or otherwise entitled to protection under the law. If
18 a Receiving Party's request to file Protected Material under seal pursuant to Local
19 Rule 79-5(d) is denied by the court, then the Receiving Party may file the
20 Protected Material in the public record pursuant to Local Rule 79-5 unless
21 otherwise instructed by the court.

22
23 **13. Final Disposition**

24 Within 60 days after the final disposition of this action, as defined in
25 paragraph 4, each Receiving Party must return all Protected Material to the
26 Producing Party or destroy such material. As used in this subdivision, "all
27 Protected Material" includes all copies, abstracts, compilations, summaries, and
28 any other format reproducing or capturing any of the Protected Material.

Ca.

1 Whether the Protected Material is returned or destroyed, the Receiving Party must
2 submit a written certification to the Producing Party (and, if not the same person
3 or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by
4 category, where appropriate) all the Protected Material that was returned or
5 destroyed and (2) affirms that the Receiving Party has not retained any copies,
6 abstracts, compilations, summaries or any other format reproducing or capturing
7 any of the Protected Material. Notwithstanding this provision, Counsel are
8 entitled to retain an archival copy of all pleadings, motion papers, trial,
9 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
10 and trial exhibits, expert reports, attorney work product, and consultant and
11 expert work product, even if such materials contain Protected Material. Any such
12 archival copies that contain or constitute Protected Material remain subject to this
13 Protective Order as set forth in Section 4 (Duration).

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15 IT IS SO ORDERED.

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17 Date: Dec. 3, 2012

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United States District Judge
Manuel Real

EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, have read and fully understand the Protective Order (the "Order") in the case entitled, *Ventana Sales Design and Manufacturing, Inc. v. Newell Window Furnishings, Inc.*, United States District Court for the Central District of California Case No. CV 12-4279 R (RZx) (the "Lawsuit"). I agree to comply with and be bound by the Order and by such other orders as the Court may make regarding discovery of Confidential Information, as defined in the Order. I agree that I will not disclose, either directly or indirectly, any Confidential Information, as defined in the Order, or the contents thereof, to any person or in any manner not specifically authorized by the Order. I agree that I will not copy or use any Confidential Information except solely for the purposes of the Lawsuit and I will return any Confidential Information and all copies thereof within sixty days of the termination or the final disposition of the Lawsuit as set forth in the Order. I agree that I will not distribute copies of, or provide access to, any Confidential Information to any person, either directly or indirectly, except as set forth in the Order. I hereby consent to the jurisdiction of this Court for the purposes of enforcing this Order.

Signature

Printed Name/Title

_____, 2012
Date